

30 APRIL 1947

I N D E X
Of
EXHIBITS

<u>Doc. No.</u>	<u>Def. No.</u>	<u>Pros. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
1058	2514		The Note from Consul KAWAI at Shanghai to Foreign Minister ARITA, dated 24 December 1936		21104
			<u>MORNING RECESS</u>		21114
			<u>NOON RECESS</u>		21129
1137	2515		Affidavit of OKAMOTO, Suemasa		21145
1063	2516		Minutes of the Joint Commission held at Shanghai Municipal Council on 12 August 1937		21176
1064	2517		Corrected Minutes of a Meeting of the Joint Commission held at the Consulate-General for France on 23 June 1937		21177

30 APRIL 1947

I N D E X
of
WITNESSES

<u>Defense' witnesses</u>	<u>Page</u>
OKAMOTO, Suemasa	21144
Direct by Mr. Roberts	21144
<u>AFTERNOON RECESS</u>	21153
Direct by Mr. Roberts (cont'd)	21154

Wednesday, 30 April 1947

INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

Appearances:

For the Tribunal, same as before with the exception of: THE HONORABLE MR. JUSTICE NORTHCROFT, not sitting.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

(English to Japanese and Japanese to English interpretation was made by the Language Section, IMTFE.)

G
o
l
d
b
e
r
g
&
K
a
p
l
e
a
u

21,097

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except OKA, HIRANUMA and TOGO who are represented
5 by counsel. The Prison Surgeon at Sugamo certifies
6 that the three named accused are too ill to attend
7 the trial today. The certificate will be recorded
8 and filed.

9 Mr. Cunningham.

10 MR. CUNNINGHAM: I now present defense
11 document No. 907. This is a government document
12 filed in the archives of the Japanese Foreign
13 Office under the heading of "Miscellaneous Matters
14 in Relation to Communist Bandits in Various Districts
15 in China," a telegram sent by Consul-general KAWAGOE
16 in Tientsin to Foreign Minister HIROTA, dated
17 July 23rd, 10th Year of Showa, that is 1937. It is
18 intended to show by this document the disastrous
19 conditions of Bolshevization in the northern part
20 of Shensi Province and its menace to Japan.

21 THE PRESIDENT: Brigadier Quilliam.

22 BRIGADIER QUILLIAM: May it please the
23 Tribunal, the prosecution object to the introduction
24 of this document. It is submitted that it comes
25 fully within the ruling given by the Tribunal yesterday

1 afternoon. It merely deals in a general way with
2 Communistic activities and has no reference whatever
3 to Japan.

4 MR. CUNNINGHAM: It seems reasonable to us,
5 your Honors, that when one hundred thousand citizens
6 of a neighboring country are killed in banditry
7 and revolution that the whole world is concerned
8 and is justified in taking an interest; that is,
9 if the right of intervention for national security
10 exists at all.

11 THE PRESIDENT: This is clearly within
12 our rule. The objection is upheld and the document
13 rejected. That is a majority decision.

14 MR. CUNNINGHAM: I now present defense
15 document No. 906. This is a government document
16 filed in the archives of the Japanese Foreign Office
17 under the heading of "Miscellaneous Matters in
18 Relation to Communist Bandits in Various Districts
19 in China," a telegram sent by Secretary MUTO in
20 Peiping to Foreign Minister HIROTA, dated the 31st
21 of March, 1936. It is intended to show by this
22 document the actual conditions surrounding the cam-
23 paign by the Nanking Government against the Communist
24 Army which invaded Shensi and the communist menace
25 in North China.

1 THE PRESIDENT: Brigadier Quilliam.

2 BRIGADIER QUILLIAM: May it please the
3 Tribunal, the prosecution objects to this document
4 which, it is submitted, is on all fours with the
5 document which has just been rejected. It contains
6 no reference at all to Japan.

7 MR. CUNNINGHAM: Future documents will
8 show that these conditions affected Japanese interests
9 and policy. I call your attention to the accused
10 named in the document.

11 THE PRESIDENT: The accused HIROTA. If
12 and when he gives evidence, this document may be
13 tendered by way of explanation. The objection is
14 upheld and the document rejected.

15 MR. CUNNINGHAM: I now offer defense docu-
16 ment 693 for the consideration of the Tribunal,
17 which is a chart which shows the organization of
18 the communist activities in North China and the
19 vast network which Japan was forced to combat.
20 This document shows forcefully the necessity for
21 Japanese resistance to the movement.

22 THE PRESIDENT: This document is 963,
23 although it appears as 693 on the exhibit. The
24 list may be wrong, of course.

25 MR. CUNNINGHAM: The list is wrong, but the

1 commentary was correct.

2 THE PRESIDENT: Brigadier Quilliam.

3 BRIGADIER QUILLIAM: May it please the
4 Tribunal, the prosecution object to this document
5 also on precisely the same ground as in respect
6 of the two previous documents. The document merely
7 purports to show the organization of the Communist
8 Party in North China and contains no reference
9 whatever to Japan.

10 MR. CUNNINGHAM: I suggest, your Honors,
11 that these documents are foundation documents for
12 use in the Russian phase of the case for the
13 explanation of the activities of the Japanese
14 Government in relation to the Anti-Commintern Pact
15 and will be referred to from time to time in the
16 other phases of the case; and certainly it is only
17 a matter of order of proof, a matter of orderly
18 presentation of the information, and we consider that
19 it is highly desirable to present the matter as
20 a general issue rather than have the individual
21 defendants give it piecemeal. And these documents
22 form a foundation for the general defense of several
23 of the defendants who are involved in this particular
24 issue.

25 THE PRESIDENT: The document is struck by the

1 Court's ruling by which you are bound. These protests
2 are out of order. I hope you will cease to make
3 them. The objection is upheld and the document
4 rejected.

5 I tell you for the third time: When the
6 individual accused are giving evidence, they may
7 well rely on documents of this kind. At least they
8 may tender them by way of explanation.

9 MR. CUNNINGHAM: Well, that was our purpose
10 in presenting them now, to avoid that duplication
11 of effort; and this will involve us going all through
12 these matters again and reorganizing our order of
13 proof.

14 THE PRESIDENT: You are still protesting.

15 MR. CUNNINGHAM: Well, I feel it is my duty
16 to point out the impracticability of the suggestion
17 that has been offered and I can't help but --

18 THE PRESIDENT: You are still protesting.
19 I hoped you would cease to protest.

20 MR. CUNNINGHAM: Now is it your suggestion
21 that I merely offer the documents now and not
22 urge their admission?

23 THE PRESIDENT: Nothing of the sort. I
24 ask you to tell us whether, in your opinion, any
25 particular document you tender is within or without

1 the rule we have laid down and leave it at that.

2 MR. CUNNINGHAM: Well, the best I can do,
3 your Honor, is read the recommendation of the party
4 who proposes the document for what they suggest it
5 relates to as a matter of probative value in the
6 case.

7 THE PRESIDENT: It is your clear duty
8 when you tender a document to express your view
9 as to whether it is or is not within the rule,
10 but not to protest against the rule.

11 MR. CUNNINGHAM: The defense document
12 No. 1213 is offered for the purpose of showing that
13 the activities of the Communist Party were continuous
14 and were directed towards the development of
15 communism in other countries than Russia and that
16 other nations besides Japan at that time were
17 resisting the action of the Seventh All-World Congress
18 of the Communist International. These are excerpts
19 of August 25th and 27th of 1936 of the year of the
20 signing of the Anti-Comintern Pact by Japan and
21 Germany.

22 MR. COMYNS CARR: Your Honor, from what
23 my friend has just said it is quite obvious that
24 this document is equally within the Court's ruling
25 with all the others that have been tendered.

1 THE PRESIDENT: It clearly is. The objection
2 is upheld and the document rejected.

3 MR. CUNNINGHAM: Defense document 1058, an
4 official communication of the Japanese Foreign Office
5 addressed to Foreign Minister ARITA by KAWAI at
6 Shanghai, is introduced to show the policy of the
7 communists towards the Japanese after the Sian
8 Incident and establishes the fact of a concerted
9 campaign against Japanese interests and nationals.

10 THE PRESIDENT: Mr. Comyns Carr.

11 MR. COMYNS CARR: If it please your Honor,
12 this document also, in my submission, is obviously
13 within the Court's ruling. It is true that it
14 mentions the proposed formation of an anti-Japanese
15 front to resist Japan through compromise with com-
16 munism; but the ruling of the Court was that it
17 would only consider documents which established as
18 facts positive action against Japanese, their
19 nationals or property. And this purports to do
20 nothing of the kind. It is further open to the
21 objection that it is based upon surmise and reports
22 from unnamed sources and consists mainly of a
23 quotation from a document which is neither produced
24 nor accounted for.

25

1 MR. CUNNINGHAM: I submit that this is a
2 document which contains the type of information
3 upon which the leaders of the Japanese Government
4 based their action and for which they are now being
5 charged in the indictment and by the evidence of the
prosecution.

6 THE PRESIDENT: By a majority the Court
7 overrules the objection and admits the document.
8

9 CLERK OF THE COURT: Defense document 1058
will receive exhibit No. 2514.
10

11 ("Whereupon, the document above referred
12 to was marked defense exhibit 2514 and received
13 in evidence.)
14

15 MR. CUNNINGHAM (reading): "TO: Foreign
Minister ARITA, Hachiro.
16

17 "FROM: Consul-General KA"AI, Tatsuo at
Shanghai.
18

19 "SUBJECT: Attitude of 'Save-the-Nation'
organizations towards the Sian Incident.
20

21 "Both the Chinese and foreigners are watch-
ing with deep concern the development of the Sian
22 Incident which broke out on December 12th. As
23 Chang F'sueh-liang and his followers' anti-Japanese
24 policy consists of 'resistance to Japan through
25 compromise with communism and union with Soviet

1 Russia', the attention of the people has also been
2 turned to the movements of the Federation of 'Save-
3 the-Nation' organizations throughout the country
4 and the 'Save-the-Nation' organizations under it,
5 which advocate the same policy and have been making
6 frantic efforts to organize an anti-Japanese united
7 front through the cooperation of political parties
8 and groups.

9 " But perhaps because the highest leaders
10 of the Federation of 'Save-the-Nation' organizations
11 throughout the country are under wholesale arrest
12 (top-secret document No. 1557, dated December 19)
13 no activities by such organizations have since been
14 apparent for several days. As the facts about the
15 Sian Incident became gradually clear, their attitude
16 seems to have been decided on, for they issued a
17 few days ago, under date of December 15, 'The
18 Emergency Declaration concerning the Present Situa-
19 tion', the translation of which is as attached here-
20 to.

22 "The main points of the opinion of the 'Save-
23 the-Nation' organizations concerning the Sian Inci-
24 dent are as follows:

25 "1. Cessation of civil strifes.
2. Suspension of the drive against the

1 communists.

2 "3. Formation of a united anti-Japanese
3 front and putting an end to the Chiang-Chang
4 rivalry.

5 "4. Peaceful settlement of the Sian Inci-
6 dent.

7 "5. Strengthening of hostilities against
8 the Japanese forces in Suiyuan.

9 "And it seems to be their object in view
10 to put an end to civil strifes by carrying on hos-
11 tilities against the Japanese. While keeping a
12 vigilant watch over the movements of the 'Save-the-
13 Nation' organizations, we hasten to report on the
14 present situation as above."

15 The defense now offers defense document
16 902, which is a telegram directed to Foreign Minis-
17 ter ARITA from Ambassador KA'AGOE, dated 13 January
18 1937, showing that the Communist Party were enforc-
19 ing their policy by force of arms in carrying out
20 their anti-Japanese program. This is a Foreign
21 Office document and ties in with the events leading
22 up to the more serious conflicts between Chinese and
23 Japanese forces.

24 MR. COMYNS CARR: Your Honor, the prosecu-
25 tion objects to this document as being within the

ruling of yesterday, which covered not only documents dealing exclusively with communist activities within China but also those which fell short of offering proof of active hostilities.

4 My friend is wrong in describing this docu-
5 ment as proving hostility against anybody, still
6 less against the Japanese. In fact, it merely
7 refers to some movements of small bodies of troops
8 within Chinese territory; and it is further open to
9 the objection that it appears to be based upon an
10 unproduced newspaper report.

12 MR. CUNNINGHAM: I invite your attention to
13 paragraph 3, which seems to bear directly upon the
14 contents of the last document read and which forms
15 the basis for the documents to come which relate
16 to the resistance of the communists -- the activities
17 of the communists against the Japanese.

18 THE PRESIDENT: By a majority the objection
19 is upheld and the document rejected.

20 MR. CUNNINGHAM: I now offer defense docu-
21 ment 906, a telegram from Consul-General MURA to
22 Foreign Minister HAYASHI, dated 21 February 1937,
23 which shows the change in the attitude of the
24 Communist Party towards Chiang Kai-shek after the
25 Sian Incident. It also shows that the kidnapping

1 of Chiang Kai-shek was carried out according to
2 instructions from the communists. The purpose of
3 this document is to show the significance of Japanese
4 relations on the conditions of Chiang Kai-shek's
5 release.

6 THE PRESIDENT: Mr. Comyns Carr.

7 MR. CUNNINGHAM: And I want to call attention
8 to "d" on page 3, which sets out that one of
9 the conditions of the release of Chiang Kai-shek
10 was that they carry out the anti-Japanese movement.

11 MR. COMYNS CARR: Your Honor, my friend
12 seems to have forgotten the words of the ruling
13 given by the Tribunal yesterday, on page 21,081
14 of the record, and I would just like to read them
15 again.

16 THE PRESIDENT: He knows them, Mr. Carr;
17 evidence of attack on Japanese persons or Japanese
18 property.

19 MR. COMYNS CARR: In addition to that main
20 objection to this document, your Honor, there is this
21 one: It is entirely based upon surmise. Your
22 Honor will observe the words "there is room to be-
23 lieve" in the third line of the document, and the
24 surmise, in its turn, is based, as appears from
25 the last two and a half lines on page 1, on a report

1 of Chiang Kai-shek was carried out according to
2 instructions from the communists. The purpose of
3 this document is to show the significance of Japanese
4 relations on the conditions of Chiang Kai-shek's
5 release.

6 THE PRESIDENT: Mr. Comyns Carr.

7 MR. CUNNINGHAM: And I want to call atten-
8 tion to "d" on page 3, which sets out that one of
9 the conditions of the release of Chiang Kai-shek
10 was that they carry out the anti-Japanese movement.

11 MR. COMYNS CARR: Your Honor, my friend
12 seems to have forgotten the words of the ruling
13 given by the Tribunal yesterday, on page 21,081
14 of the record, and I would just like to read them
15 again.

16 THE PRESIDENT: He knows them, Mr. Carr;
17 evidence of attack on Japanese persons or Japanese
18 property.

19 MR. COMYNS CARR: In addition to that main
20 objection to this document, your Honor, there is this
21 one: It is entirely based upon surmise. Your
22 Honor will observe the words "there is room to be-
23 lieve" in the third line of the document, and the
24 surmise, in its turn, is based, as appears from
25 the last two and a half lines on page 1, on a report

1 from an unnamed secret agent of the consulate of
2 something which the agent heard from an unnamed
3 member of the Communist Party.

4 MR. CUNNINGHAM: The strange part of this
5 matter is, your Honor, what has been expressed in
6 this document has been confirmed in history, and
7 the policy of the Japanese Government had to be
8 determined from the information received from
9 reporters on the spot, from the best information
10 available.

11 From the evidence which we offered yester-
12 day and the day before we described the activities
13 of the Chinese and the anti-Japanese movement, and
14 it was specifically an attack against Japanese
15 interests and Japanese nationals, and therefore we
16 must allow that "d" carries that strong implication.

17 THE PRESIDENT: By a majority the objec-
18 tion is upheld and the document rejected.

19 MR. CUNNINGHAM: Defense document 911, a
20 telegram from Ambassador KAWAGOE to Foreign Minister
21 SATO, on March 5, 1937, is introduced for the purpose
22 of showing that the communist wing openly asked for
23 war preparations against Japan at a time when both
24 nations were carrying on diplomatic relations. It
25 relates to the source of the troubles then and the

1 trouble now, not only in China but in many other
2 parts of the world.

3 THE PRESIDENT: Mr. Comyns Carr.

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

W
h
a
l
e
n
&
D
u
c
a

1 THE PRESIDENT: Mr. Comyns Carr.

2 MR. COMYNS CARR: This document, your Honor,
3 offends against two rulings of the Court. The first
4 is that it consists almost entirely of a document
5 which is not produced, nor is its absence accounted for.

6 The fifth line says that "The full text of
7 the alleged document is as follows," and then pro-
8 ceeds to set out what is alleged to be the text of the
9 document.

10 The second is that although it speaks of a
11 united national front against Japan and completing
12 speedily all preparations for war against Japan, it
13 falls short of purporting to record any actual attack.

14 THE PRESIDENT: Mr. Comyns Carr.

15 MR. COMYNS CARR: Your Honor, I only desire
16 to add this: My friend refers to preparations
17 advocated by the Chinese communists or carried out,
18 even carried out, as though they were something which
19 could possibly justify a Japanese attack.

20 Having regard to the actions of Japan already
21 proved in this case, in my submission preparations for
22 defending themselves against further actions of the
23 same kind are not only natural and proper, but cannot
24 possibly be made the excuse for such further Japanese
25 actions themselves.

1 MR. CUNNINGHAM: I submit that the prosecutor
2 has gone beyond the record in assuming matters proven
3 that are only matters of evidence. But I suggest
4 that if this document does not bear upon this subject,
5 then it would be necessary to have some instructions
6 on what type of evidence is to be introduced for the
7 purpose of showing the basis upon which the Japanese
8 Government based its policy towards Japan and creating
9 the necessity of protecting their interests wherever
10 they were.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 THE PRESIDENT: Now, our ruling speaks of
2 attacks, but if you have documents showing threats
3 of attack on Japanese nationals and property you are
4 invited to tender them. As you know, the definition
5 of assault includes a threat of assault by a person
6 having a present ability to effect his purpose.

7 MR. CUNNINGHAM: I refer to No. 4 on page 3,
8 which says "to complete speedily all preparations for
9 war against Japan." We have been led to believe that
10 preparation for war is one of the vital elements con-
11 tested in this case, and it is just as much a defense
12 for the Japanese as it is a charge for any of the com-
13 plaining nations.

14 THE MONITOR: Mr. Cunningham, may I have a
15 little explanation? We are not sure as to the meaning
16 of the word "defense." Do you mean defense in the
17 sense that Japan acted in self-defense, or do you mean
18 defense in this trial?

19 MR. CUNNINGHAM: A contention of the defense.

20 THE PRESIDENT: The Court proposes to adjourn
21 for a few minutes to consider a certain point.

22 MR. COMYNS CAKE: Before the Court adjourns,
23 might I just, in view of my friend's remark, draw
24 attention to the opening paragraph of the alleged
25 telegram quoted, which states that the object of the

1 preparations is "to protect ourselves from foreign
2 invasions."

3 THE PRESIDENT: We will recess for some minutes.

4 (Whereupon, at 1020, a recess
5 was taken until 1100, after which the
6 proceedings were resumed as follows:)

S
p
r
a
t
t
&
Y
e
l
d
e
n

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: In addition to the documents
4 which the Court indicated yesterday it would receive,
5 namely, documents which were evidence of actual attacks
6 by communists and others on Japanese nationals and
7 property, the Court has decided to receive evidence
8 of threatened attacks of that character, namely, where
9 the threat is of a serious nature, where it is imme-
10 nient, and where the persons making it have present
11 ability to give effect to it -- where they have the
12 ability to execute it.

13 The document last tendered is not of that
14 character nor does it contain evidence of any actual
15 threat--attack. The objection is upheld and the
16 document rejected. That is a decision of the majority.

17 MR. CUNNINGHAM: Defense document 913,
18 March 16, 1937, is a telegram to the Foreign Minister
19 SATO which shows the five points in the program of the
20 Chinese communist party. Future documents will show
21 the effect which these party principles had upon
22 Japanese-Chinese relations.

23 MR. COMYNS CARR: Your Honor, it is perfectly
24 obvious in our submission that this document could not
25 possibly come within the ruling just delivered by the

1 Court or the ruling delivered yesterday. It is a
2 report based on information from an unnamed source
3 and if your Honor looks at the paragraph numbered --
4 it says that certain people met together and then
5 decided upon the following future course for the
6 Chinese communist party; and if you look, paragraph
7 speaks of intention under the guise of an anti-
8 Japanese campaign to improve the organization of the
9 party. Then it refers to forming a popular front
10 which in paragraph 4 is said to be for the purpose
11 of realizing its demands in the interests of the
12 masses as a prerequisite for the anti-Japanese
13 mobilization; and in paragraph 5, that the object of
14 the organization is to be one to oppose Japanese
15 imperialism. In our respectful submission the tender-
16 ing of such a document immediately after the deliver-
17 ing of the Court's ruling shows a complete disregard
18 for it.

19
20 THE PRESIDENT: I suppose they want a record
21 of the documents they have tendered.

22 MR. CUNNINGHAM: Not only that, your Honor,
23 but I feel that the names of these leaders will become
24 more prominent as our evidence is revealed and that
25 each of these documents dovetails into the ones that
follow to show that the communist armed forces worked

s
u-
a
it

1 Court or the ruling delivered yesterday. It is a
2 report based on information from an unnamed source
3 and if your Honor looks at the paragraph numbered --
4 it says that certain people met together and then
5 decided upon the following future course for the
6 Chinese communist party; and if you look, paragraph
7 1 speaks of intention under the guise of an anti-
8 Japanese campaign to improve the organization of the
9 party. Then it refers to forming a popular front
10 which in paragraph 4 is said to be for the purpose
11 of realizing its demands in the interests of the
12 masses as a prerequisite for the anti-Japanese
13 mobilization; and in paragraph 5, that the object of
14 the organization is to be one to oppose Japanese
15 imperialism. In our respectful submission the tender-
16 ing of such a document immediately after the deliver-
17 ing of the Court's ruling shows a complete disregard
18 for it.

19 THE PRESIDENT: I suppose they want a record
20 of the documents they have tendered.

21 MR. CUNNINGHAM: Not only that, your Honor,
22 but I feel that the names of these leaders will become
23 more prominent as our evidence is revealed and that
24 each of these documents dovetails into the ones that
25 follow to show that the communist armed forces worked

1 out a program which developed in these conferences
2 beforehand. I suggest that no one document can carry
3 out and prove the picture which we wish to present to
4 this Court as relating to the situation as it existed
5 but by taking each document with the one before and
6 the one after you will find that it makes a complete
7 picture which shows one of the underlying causes which
8 created the Sino-Japanese conflict.

9 THE PRESIDENT: By a majority the Court
10 upholds the objection and rejects the document.

11 MR. CUNNINGHAM: Defense document 912 is
12 a telegram from MIURA, the Consul-General, to the
13 Foreign Minister SATO on the 13th of March 1937. It
14 is now offered to show the anti-Japanese program of
15 the Chinese communist group after the Sian Incident.
16 This is an official document of the Japanese Foreign
17 Office and relates to the underlying causes of
18 Japanese-Chinese conflicts. Its probative value is
19 augmented by the fact that it ties in with the docu-
20 ments preceding and those to come and is part of a
21 series of telegrams relating to the situation as it
22 existed at the time.

23

24

25

MR. COMYNS CARR: Your Honor, we object.

1 THE PRESIDENT: Mr. Comyns Carr.

2 MR. COMYNS CARR: We fail to see how the
3 probative value of a document can be increased by
4 its tying in with one already rejected. There is
5 nothing whatever in it, in our submission, which
6 comes anywhere near the ruling of this Tribunal.
7 The nearest, perhaps, is the paragraph numbered
8 "c" which speaks of the reorganization of the
9 Red Army into the anti-Japanese. I mention that
10 to show how far away it is from the ruling of the
11 Tribunal.

12 We also desire to press the other ground
13 of the objection, which I have mentioned several
14 times; namely, that although included in a consular
15 report it is the merest gossip. The whole of it
16 is introduced by the words, "According to the in-
17 formation of the Communist Party at Sian, it seems."

18 MR. CUNNINGHAM: The suggestion that
19 page 3 has a direct bearing upon the situation
20 which has been described, "Establishment of the
21 Red Army bases," and so on, comes within this rule,
22 and (g) on page 3 seems to come within the classi-
23 fication of documents which have been suggested for
24 admission.

25 THE PRESIDENT: By a majority the Court

1 upholds the objection and rejects the document.

2 MR. CUNNINGHAM: Defense document 901 is
3 introduced for the purpose of showing that on
4 April 2, 1937, detailed reports were coming into the
5 Japanese Foreign Office concerning the rapid ex-
6 pansion of anti-Japanese allied armies against
7 which it was necessary for the Japanese to protect
8 themselves. This document forms part of the basis
9 upon which the policy of the Japanese Government
10 was based, which policy these defendants are charged
11 with enforcinz. If the Japanese forces and interests
12 were in China under treaty rights, as we have shown,
13 any activity against them is a violation of inter-
14 national law if committed on foreign soil. That is
15 our contention.

16 THE PRESIDENT: Mr. Comyns Carr.

17 MR. COMYNS CARR: Your Honor, this document
18 is subject to both the objections of the previous one.
19 It is again mere gossip, and as to its subject matter
20 all it mentions is that certain Red armies have now
21 been incorporated in the National arry as anti-
22 Japanese allied armies and will receive certain
23 military expenses.

25 As to the remarks with which my friend
introduced the document, we have long since realized

1 the Japanese contention that anybody who resisted
2 Japanese aggression was guilty of an unlawful act,
3 but that does not bring it within the ruling of the
4 Tribunal.

5 DR. CUNNINGHAM: I ask the Tribunal to
6 remember the remark of the prosecution that the
7 diplomatic reports are mere gossip, because a great
8 deal of their evidence that they are holding against
9 these accused bears that classification.

10 THE PRESIDENT: By a majority the Court
11 holds the objection and rejects the document.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Morse & Greenberg

MR. CUNNINGHAM: Defense document 915, same series as document No. 901, which verifies and expands the reports previously offered, to show the continued action of the Communist Party in the anti-Japanese campaign.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: In the submission of the prosecution, the document verifies nothing. When I described the previous document and this one as mere gossip, I did not mean, as my friend very well knows, that that was because they were diplomatic reports.

THE PRESIDENT: We thoroughly understood that.

MR. COMYNS CARR: This one begins with the words, "An influential communist here delivered us information which, he said, was obtained from" a certain bureau. "According to it, it is reported," and so on. On the main question, Japan is not mentioned once in it. It deals exclusively with internal, political and military reorganization in China.

MR. CUNNINGHAM: I submit that when the Chinese conflict is described, it certainly should be pertinent to show the military activity in China

1 as well as the preparation in Japan and as counter-
2 measures, and that this evidence should be admitted
3 for the purpose of showing what the Japanese had
4 to combat.

5 THE PRESIDENT: By a majority, the Tri-
6 bunal upholds the objection and rejects the docu-
7 ment.

8 MR. CUNNINGHAM: I now present defense
9 document 898 which is a top secret document, dated
10 April, 1935 -- It happens to be here a little
11 out of order -- addressed to Foreign Minister
12 HIROTA from the Consul-General at Hankow, describ-
13 ing the plot of the Third Internationale. This
14 document bears on the existence of the anti-
15 Japanese feeling and the aggravation of it by the
16 communist activities.

17 THE PRESIDENT: Mr. Comyns Carr.

18 MR. COMYNS CARR: Your Honor, this docu-
19 ment is subject to both the same objections as
20 before; that is to say, it is described as "inform-
21 ation received by the police station of this con-
22 sulate."

23 With regard to the Tribunal's recent
24 ruling, it deals entirely with secret attempts to
25 spread communism by propaganda, or alleged attempts,

1 and the only reference to Japan is that it is
2 alleged that one of the persons so engaged was a
3 Japanese.

4 THE PRESIDENT: By a majority, the Tri-
5 bunal upholds the objection and rejects the docu-
6 ment.

7 MR. CUNNINGHAM: I now present defense
8 document 899. It is a government document filed
9 in the archives of the Japanese Foreign Office
10 under the heading of Miscellaneous Matters in
11 relation to communist bandits in various districts
12 of China, January '35. It is intended to show by
13 this document that the Soviet Union also guides
14 the Chinese Communist Party and funds necessary
15 for its activities are also supplied by the Soviet
16 Embassy.

17 THE PRESIDENT: Mr. Comyns Carr.

18 MR. COMYNS CARR: This, again, is objection-
19 able on the ground that it contains what purports
20 to be a document, or the description and the con-
21 tents of a document, without any explanation as to
22 where the document is or what's become of it, and
23 there is no indication of the source either of the
24 document tendered itself or of the document quoted
25 in it. As to the contents, it is entirely within

1 The Tribunal's ruling, there being no mention of
2 Japan from start to finish.

3 Apparently, the sort of thing which it is
4 desired to bring to the attention of the Tribunal
5 is a statement at the bottom of page 4 that the
6 communist -- the activities of a communist forma-
7 tion are not different from those of bandits or
8 of the Chinese Army in general. In our submission,
9 the time of the Tribunal should not be wasted by
even tendering such matter.

10 MR. CUNNINGHAM: Perhaps it is a good thing
11 that Mr. Carr isn't presenting these defense docu-
12 ments then. But I want to merely call attention
13 to the fact that this document is offered in con-
14 nection with the chart which I introduced, document
15 No. 693.

16 THE PRESIDENT: As the chart was rejected,
17 you should be satisfied to formally tender this
18 document. By a majority, the Tribunal upholds the
19 objection and rejects the document.

20 MR. CUNNINGHAM: Defense document 918 is
21 a telegram from Consul-General NAKAMURA to Foreign
22 Minister SATO on the night of April 19, 1937, which
23 describes some of the details in the relationship
24 between the communists and Chiang Kai-shek's forces
25 and their anti-Japanese campaign.

1 the Tribunal's ruling, there being no mention of
2 Japan from start to finish.

3 Apparently, the sort of thing which it is
4 desired to bring to the attention of the Tribunal
5 is a statement at the bottom of page 4 that the
6 communist -- the activities of a communist forma-
7 tion are not different from those of bandits or
8 of the Chinese Army in general. In our submission,
9 the time of the Tribunal should not be wasted by
even tendering such matter.

10 MR. CUNNINGHAM: Perhaps it is a good thing
11 that Mr. Carr isn't presenting these defense docu-
12 ments then. But I went to merely call attention
13 to the fact that this document is offered in con-
14 nection with the chart which I introduced, document
15 No. 693.

16 THE PRESIDENT: As the chart was rejected,
17 you should be satisfied to formerly tender this
18 document. By a majority, the Tribunal upholds the
19 objection and rejects the document.

20 MR. CUNNINGHAM: Defense document 918 is
21 a telegram from Consul-General NAKAMURA to Foreign
22 Minister SATO on the night of April 19, 1937, which
23 describes some of the details in the relationship
24 between the communists and Chiang Kai-shek's forces
25 and their anti-Japanese campaign.

1 THE PRESIDENT: Mr. Comyns Carr.

2 MR. COMYNS CARR: Your Honor, this is
3 triple hearsay of a kind frequently rejected by
4 the Tribunal. It purports to be information pre-
5 sented to the Consul by a Mr. ABEND whose book
6 the Tribunal has already declined to receive in
7 evidence as to information received by him from
8 an unnamed person.

9 As to the Tribunal's ruling on subject
10 matter, the only reference to Japan is that it is
11 alleged that Chiang Kai-shek rejected some proposal
12 from the communists to start an anti-Japanese move-
13 ment.

14

15

16

17

18

19

20

21

22

23

24

25

1 MR. CUNNINGHAM: I understood that of course
2 we did not have to be concerned with the hearsay rule,
3 second degree, third degree, or fourth degree, but this
4 document speaks for itself, I believe, and if you will
5 refer to the first paragraph you will see that it relates
6 to one of the key figures who took an important part
7 in the cause of the disruption of Japanese-Chinese
8 relations, and certainly anything pertaining to their
9 relations should be considered of probative value.

10 THE PRESIDENT: By a majority, the Tribunal
11 upholds the objection and rejects the document.

12 MR. CUNNINGHAM: Defense document 916 is a
13 report of the 28th of April, 1937, to Foreign Minister
14 SATO of the Japanese Foreign Office showing that the
15 Communist forces were using subterfuge to make them-
16 selves strong and accepting the propaganda against
17 the Japanese as a basis for their combined efforts
18 with the Central Government.

19 THE PRESIDENT: Mr. Comyns Carr.

20 MR. CUNNINGHAM: The document is offered.

21 MR. COMYNS CARR: Your Honor, it is subject
22 to both the same objections as before. It is based
23 upon information received from an unnamed communist,
24 and I would just like to say that although the Tribunal
25 is not bound by the hearsay rule there does come a

1 point when gossip ceases to have any probative value
2 of any kind. On the Tribunal's ruling of this morning,
3 there is nothing in the document. The only reference
4 to the word "Japan" is in paragraph 2, but there is
5 nothing which brings it remotely near anything within
6 the Tribunal's ruling.

7 THE PRESIDENT: The Tribunal, by a majority,
8 upholds the objection and rejects the document.

9 MR. CUNNINGHAM: In support of the allegations
10 in the opening statement concerning the agreement
11 between the Chiang Government and the communists, we
12 now offer defense document 917 which is an official
13 report of the Consul-General MIURA to Foreign Minister
14 SATO on conditions at Hangkow on May 4, 1937. I wish
15 to say specifically at the bottom of page 1, No. 2,
16 that the paragraph there comes within this ruling
17 quite specifically.

18 THE PRESIDENT: Mr. Carr.

19 MR. COMYNS CARR: Your Honor, this document
20 is a most alarming example of gossip. The consul
21 reports that according to information from unnamed
22 communist sources it is said that somebody is said to
23 have talked privately to communist members and his
24 impression of what was said seems to be as follows.

25 In our submisstion, whatever the subject matter

1 of such a document, it could have no probative value,
2 but we also submit that there is nothing in the sub-
3 sequent remarks said to have been transmitted in that
4 manner which brings it anywhere near the Tribunal's
ruling.

5 MR. CUNNINGHAM: I might say that anyone
6 who understands the first principle of diplomacy appreci-
7 ates that the names of informants are not given in
8 official dispatches from the embassies.

9 THE PRESIDENT: That is an unfortunate leap
10 in the dark. Abend's name is disclosed.

11 MR. CUNNINGHAM: Well, I have read a lot of
12 ambassador's diaries and I have seen so many blanks
13 when that matter has been emphasized that I have
14 certainly been impressed with that one feature of
15 diplomatic dispatches and records.

16 THE PRESIDENT: By a majority, the Tribunal
17 upholds the objection and rejects the document.

18 MR. CUNNINGHAM: Defense document 909 is now
19 offered, which is a telegram from Consul-General
20 OKAMOTO, 22 June 1937, to Foreign Minister HIROTA,
21 emphasizing the compromise between the nationalists
22 and the communists and expanding upon the Sian
23 Incident.

24 THE PRESIDENT: Mr. Comyns Carr.

1 of such a document, it could have no probative value,
2 but we also submit that there is nothing in the sub-
3 sequent remarks said to have been transmitted in that
4 manner which brings it anywhere near the Tribunal's
5 ruling.

6 MR. CUNNINGHAM: I might say that anyone who
7 understands the first principle of diplomacy appreci-
8 ates that the names of informants are not given in
9 official dispatches from the embassies.

10 THE PRESIDENT: That is an unfortunate leak
11 in the dike. Abend's name is disclosed.

12 MR. CUNNINGHAM: Well, I have read a lot of
13 ambassador's diaries and I have seen so many blanks
14 when that matter has been emphasized that I have
15 certainly been impressed with that one feature of
16 diplomatic dispatches and records.

17 THE PRESIDENT: By a majority, the Tribunal
18 upholds the objection and rejects the document.

19 MR. CUNNINGHAM: Defense document 909 is now
20 offered, which is a telegram from Consul-General
21 OKAMOTO, 22 June 1937, to Foreign Minister HIROTA,
22 emphasizing the compromise between the nationalists
23 and the communists and expanding upon the Sian
24 Incident.

25 THE PRESIDENT: Mr. Comyns Carr.

1 MR. COMYNS CARR: Both the same objections,
2 your Honor. This information is from an unnamed man
3 who is said to have connections with the communists
4 and he told one of the staff of the consulate the
5 following confidential story. The story as told
6 contains nothing which could possibly be within the
7 Tribunal's ruling.

8 THE PRESIDENT: By a majority, the Tribunal
9 upholds the objection and rejects the document.

10 We will recess until half past one.

11 (Whereupon, at 1200, a recess was
12 taken.)

AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

MR. CUNNINGHAM: I next present defense defense document No. 908. This is a government document filed in the archives of the Foreign Office under the heading of "Miscellaneous Matters in Relation to Communist Bandits in Various Districts in China," a telegram sent by Secretary MUTO in Peiping to Foreign Minister HIROTA, dated March 26, 1936. It is intended to show by this document that the Keichai Political Council is trying to prevent the spread of bolshevism and point out its evils.

18 THE PRESIDENT: Mr. Comyns Carr.

19 MR. COMYNS CARR: In our submission this
20 document is equally obnoxious to the Tribunal's
21 ruling. This is a document which purports to
22 supply the gist of two propaganda leaflets not pro-
23 duced of an anti-communist character, alleged to
24 have been distributed by the Hopei Chahar Political
25 Council. In my submission, even if they were authen-

1 tic it merely shows internal political differences
2 of opinion in China and can have no conceivable
3 relevance to this trial. There is no reference to
4 Japan or any Japanese national or property.

5 We would also ask the Tribunal to enforce
6 its previous ruling against evidence purporting to
7 give the contents of documents not produced.

8 THE PRESIDENT: Mr. Cunningham.

9 MR. CUNNINGHAM: I have nothing further to
10 add on that document, your Honor.

11 THE PRESIDENT: By a majority the Tribunal
12 upholds the objection and rejects the document.

13 MR. CUNNINGHAM: We next offer defense docu-
14 ment 313, which is a recent report of an Allied
15 newspaper published in Japan, and shows the New
16 Years' message of Chiang Kai-shek, emphasizing
17 the disturbing influence of communism in China.
18 This article merely serves as an illustration of
19 the real underlying cause of disunity and lack of
20 stability in China.

21 MR. COMYNS CARR: Your Honor, we hope that
22 the offer of this document is intended as a joke
23 and not an insult; but in our submission, to suggest
24 that a controversy taking place at the present date
25 with regard to communism and anti-communism in

1 China or anywhere else is a thing which by no con-
2 ceivable stretch of the imagination could have any
3 relevance to this trial.

4 MR. CUNNINGHAM: It is suggested by this
5 document that the difficulty in China rested, not
6 with the Japanese infiltration and occupation of
7 its troops there under its treaties, but existed on
8 account of the internal conditions between the
9 communistic activities and the Chinese nationalist
10 forces.

11 THE PRESIDENT: The Tribunal upholds the
12 objection and rejects the document.

13 MR. CUNNINGHAM: As the last document in
14 this section we offer defense document 1156, which
15 is an excerpt from the report to President Truman
16 by General Marshall on the completion of his recent
17 mission to China, in which he emphasizes that com-
18 munist propaganda has been and is one of the under-
19 lying causes of the failure of the Chinese Govern-
20 ment to maintain peace and order.

21 THE PRESIDENT: Mr. Comyns Carr.

22 MR. COMYNS CARR: This document is open
23 to exactly the same objection as the last. I will
24 say no more.

25 THE PRESIDENT: The objection is upheld

1 China or anywhere else is a thing which by no con-
2 ceivable stretch of the imagination could have any
3 relevance to this trial.

4 MR. CUNNINGHAM: It is suggested by this
5 document that the difficulty in China rested, not
6 with the Japanese infiltration and occupation of
7 its troops there under its treaties, but existed on
8 account of the internal conditions between the
9 communistic activities and the Chinese nationalist
10 forces.

11 THE PRESIDENT: The Tribunal upholds the
12 objection and rejects the document.

13 MR. CUNNINGHAM: As the last document in
14 this section we offer defense document 1156, which
15 is an excerpt from the report to President Truman
16 by General Marshall on the completion of his recent
17 mission to China, in which he emphasizes that com-
18 munist propaganda has been and is one of the under-
19 lying causes of the failure of the Chinese Govern-
20 ment to maintain peace and order.

21 THE PRESIDENT: Mr. Comyns Carr.

22 MR. COMYNS CARR: This document is open
23 to exactly the same objection as the last. I will
24 say no more.

25 THE PRESIDENT: The objection is upheld

1 and the document rejected.

2 MR. CUNNINGHAM: That completes the presen-
3 tation of Sub-division 2 of Phase III of the case
4 on boycott and anti-Japanese activities and commun-
5 istic activities in China.

6 I will now present Mr. Roberts, who will
7 present the next phase of the case.

8 THE PRESIDENT: Mr. Roberts.

9 MR. ROBERTS: Mr. President, we shall now
10 offer the proof through witnesses and documents
11 concerning the second Shanghai Incident where hos-
12 tilities began on August 13, 1937.

13 "We call the attention of the Tribunal to
14 Exhibit 2419, formerly defense document No. 34,
15 which is an agreement for the cessation of hos-
16 tilities around Shanghai. Attention is called to
17 this document because of the fact that it will be
18 referred to by witnesses and other documents on
19 several occasions hereafter.

20 I shall read only Annex III on page 5,
21 which concerns itself with the duties of the Joint
22 Commission only.

23 "ANNEX III.

24 "The Joint Commission will be composed of
25 12 members, namely, one civilian and one military

1 representative of each of the following: The
2 Japanese and Chinese Governments, and the American,
3 British, French and Italian Heads of Mission in
4 China, being the representatives of the friendly
5 Powers assisting in the negotiations in accord-
6 ance with the Resolution of the Assembly of the
7 League of Nations of March 4th. The members of the
8 Joint Commission will employ such numbers of assis-
9 tants as they may from time to time find necessary
10 in accordance with the decisions of the Commission.

11 "All matters or procedure will be left to
12 the discretion of the Commission, whose decisions
13 will be taken by majority vote, the Chairman having
14 a casting vote. The Chairman will be elected by
15 the Commission from amongst the members representing
16 the participating friendly Powers.

17 "The Commission will in accordance with
18 its decisions watch in such manner as it deems
19 best the carrying out of Articles 1, 2, and 3 of
20 this Agreement, and is authorised to call attention
21 to any neglect in the carrying out of the provisions
22 of any of the three Articles mentioned above."

23 We now offer in evidence defense document
24 No. 1110, which is an official statement by the
25 Foreign Office on August 10, 1937, on the murder of

1 Lieutenant OYAMA in Shanghai on August 9, 1937.

2 THE PRESIDENT: Mr. Comyns Carr.

3 MR. CONYNS CARR: If your Honor pleases,
4 we object to this document on two grounds, the first
5 of which applies to the whole of the rest of the
6 documents and affidavits in this section. The
7 section proposes to deal exclusively with the inci-
8 dents which took place at Shanghai in the summer of
9 1937.

10 THE MONITOR: Just a moment. All right.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 MR. COMYNS CARR: I do not know what rule
2 this Tribunal will adopt, but the rule with which
3 I am familiar in our courts is this: If a witness
4 for the prosecution testifies with regard to a
5 particular subject matter and the defense has evi-
6 dence which it proposes to adduce relating to that
7 subject matter and likely to be within the knowledge
8 of that witness, they are bound to put the substance
9 of their evidence to that witness in cross-examina-
10 tion in order that he may have an opportunity of
11 dealing with it while the evidence is being given.
12 If that is not done, the defense evidence is not
13 allowed to be given without the special leave of
14 the Court which, as far as I know, is never given
15 unless it is possible to recall the prosecution
16 witness in order to give him the opportunity which
17 he ought to have had in the first instance. The
18 witness who gave evidence for the prosecution on
19 this Incident was Mr. Powell at page 3253 and
20 following pages of the record. He also gave evidence
21 about a number of other matters as to which he was
22 cross-examined at length; but not a single question
23 was put to him by the defense about this matter.
24 Now, when death has unfortunately prevented us from
25 recalling Mr. Powell, who was present in Shanghai and

1 an eyewitness at most of these events, we are
2 presented with a volume of evidence from the defense
3 dealing with matters of detail about which he could
4 have told the Tribunal. That objection will apply
5 not only to this document but to the whole of the
6 rest of the evidence in this subdivision.

7 THE PRESIDENT: In the absence of any
8 explanation, the failure to cross-examine would be
9 matter for comment and, perhaps, severe comment
10 according to the circumstances; but I cannot say
11 that in our jurisdictions we would go further than
12 that. Perhaps a different rule prevails in the
13 different countries, Mr. Comyns Carr.

14 MR. COMYNS CARR: In regard to this par-
15 ticular document, your Honor, it is objectionable
16 because it is an ex parte statement issued by the
17 Foreign Office of a kind which the Tribunal has
18 rejected over and over again. It proves that that
19 is what the Japanese Government chose to say at
20 this particular time; but it is no evidence whatever
21 either that they believed it or that it was true.

22 THE PRESIDENT: Mr. Roberts.

23 MR. ROBERTS: This is a direct statement
24 of the facts surrounding the murder of Lieutenant
25 OYAMA on August 9, 1937. It is an official statement.

1 It states facts leading up to the cause of the
2 outbreak in Shanghai several days later and is
3 certainly, in addition to being part of the res
4 gestae, it is admissible under the Charter as
5 an official statement and has probative value.

6 THE MONITOR: Could you explain "res
7 gestae", Mr. Roberts?

8 MR. ROBERTS: R-e-s g-e-s-t-a-e.

9 THE MONITOR: In English, please.

10 MR. ROBERTS: It is a Latin expression.

11 THE MONITOR: We have no way of translating
12 that unless it is in English.

13 MR. ROBERTS: "as a part of the events
14 which occurred at the time."

15 THE PRESIDENT: I think the position I
16 put to you toward Mr. Carr is very succinctly stated
17 by a Member of the Tribunal in these terms: "This
18 trial covers a vast scope of events. The defense
19 necessarily acquires its information and assembles
20 its evidence over a long period of time. We are not
21 bound by technical rules of evidence. Therefore,
22 we do not reject the evidence because there was no
23 cross-examination in respect to it of Mr. Powell."

24 By a majority we have decided to overrule the
25 objection and to admit the document for what it is

1 worth.

2 CLERK OF THE COURT: Defense document 1110--

3 THE PRESIDENT: Just a minute. I have
4 misread something that occurs at the foot of this
5 note, and I have to recount the votes with a dif-
6 ferent result. The objection is upheld and the
7 document rejected by a majority.

8 MR. ROBERTS: Am I to assume that the
9 document was rejected not because of the objection
10 first stated by Mr. Comyns Carr?

11 THE PRESIDENT: The ground that there was
12 no cross-examination fails. It is rejected because
13 it has no probative value in the opinion of a
14 majority of the judges.

15 MR. ROBERTS: We now offer defense document
16 No. 1120, which is a declaration by the Director
17 of the Information Bureau dated August 14, 1937,
18 being an official document on file in the Japanese
19 Foreign Office. This is a statement concerning
20 the bombing of the Hung-jao area in Shanghai by
21 the Chinese which describes the indiscriminate
22 bombing of their own people. This is the beginning
23 of hostilities in Shanghai. I might add that it is
24 our intention to eliminate some of the material and
25 to read only the first two paragraphs and the last

1 two paragraphs.

2 THE PRESIDENT: Mr. Comyns Carr.

3 MR. COMYNS CARR: Your Honor, this document
4 is of exactly the same character as the last one
5 and open to exactly the same objection as the
6 second of the objections which I took to that,

7 Your Honor, I should also like to take
8 this opportunity to object to the making by counsel
9 of ex parte statements about the contents of the
10 document before the Tribunal has ruled upon its
11 admissibility. This is one of the matters on which,
12 when the true facts are ascertained or if Mr. Powell
13 had been cross-examined about it, in our view a
14 totally different complexion would have been put
15 upon the matter from that which counsel has mentioned.

16 THE PRESIDENT: In describing a document
17 or in endeavoring to justify its admission counsel
18 sometimes refer too fully to the contents. It is
19 very difficult to regulate. We must rely on the
20 good taste of counsel. More particularly, where
21 this red light prevents us from intervention at once,
22 we must listen here to things which we would not
23 lend our ears to in an ordinary court unfortunately.

24 MR. ROBERTS: I want to assure the Court
25 that the information given is only to describe the

1 nature of the document.

2 THE PRESIDENT: The Tribunal by a majority
3 upholds the objection and rejects the document.

4 MR. ROBERTS: We now offer in evidence
5 defense document No. 65, which is an official
6 statement of the Japanese Government dated August
7 15, 1937.

8 THE PRESIDENT: Mr. Comyns Carr.

9 MR. COMYNS CARR: This document is open -
10 to exactly the same objection, your Honor. It is
11 simply an ex parte statement by the Japanese
12 Government.

13 MR. ROBERTS: We submit, if your Honor
14 please, that this is an official statement of the
15 government on the outbreak of hostilities in Shanghai
16 setting forth the causes of the Incident and the
17 steps to be taken to meet the acts of the Chinese
18 forces.

19 THE PRESIDENT: No objection?

20 MR. COMYNS CARR: I have stated my objection
21 to this document, your Honor, which is exactly the
22 same as to the last two.

23

24

25

1 MR. ROBERTS: Needless to say, this official
2 statement from the government is made after investiga-
3 tion, and is a report of the facts leading up to the
4 outbreak of hostilities.

5 THE PRESIDENT: The Tribunal by a majority
6 upholds the objection and rejects the document.

7 MR. ROBERTS: We now offer defense document
8 No. 1121, which is an official document emanating from
9 the Foreign Office, dated August 16, 1937, concerning
10 the second Shanghai Incident. It is a statement of
11 the facts which required Japan to defend its nationals
12 in Shanghai.

13 THE PRESIDENT: Mr. Comyns Carr.

14 MR. COMYNS CARR: We object to this document
15 on exactly the same grounds which have already prevailed
16 in the case of the last three, your Honor.

17 THE PRESIDENT: Can you distinguish this from
18 the last document, Mr. Roberts?

19 MR. ROBERTS: No, I cannot, except to add that
20 it will be offered subject to connection by subsequent
21 witnesses.

22 THE PRESIDENT: The Tribunal upholds the
23 objection and rejects the document.

24 MR. ROBERTS: We now offer in evidence defense
25 document No. 206-L(5). This is an excerpt from the diary

1 of former United States Ambassador Grew concerning the
2 bombing of Shanghai on August 14 by the Chinese. It is
3 clearly a factual statement of the indiscriminate bombing
4 on the date aforementioned.

5 MR. COMYNS CARR: Your Honor, we object to
6 this document on the grounds which have been taken to
7 a number of similar extracts offered from this book.
8 It merely expresses Mr. Grew's opinion about something
9 which was, as far as he was concerned, a matter of
10 hearsay. It is important to know whether at the time
11 when Mr. Grew wrote this he had received the account
12 of only one side of the matter or of both.

13 THE PRESIDENT: It is no doubt hearsay, and
14 the source is not disclosed.

15 MR. ROBERTS: May we remind the Court that
16 Mr. Grew was at that time the American ambassador, and
17 it states in the last sentence there that they received
18 first-hand accounts from the refugees, which under the
19 Charter is admissible. It certainly has some probative
20 value and should be accepted by the Court for whatever it
21 may be worth.

22 THE PRESIDENT: Hearsay is, of course, admissible,
23 but we expect to know the person responsible for it.
24 We have given you permission to interrogate Mr. Grew,
25 of course.

OKAMOTO

DIRECT

21,144

By a majority, the Court upholds the objection
and rejects the document.

1 MR. ROBERTS: We now call the witness
2 OKAMOTO, Suemasa.

3 - - - -
4 S U E M A S A O K A M O T O , called as a witness
5 on behalf of the defense, being first duly
6 sworn, testified through Japanese interpreters
7 as follows:

8
9 DIRECT EXAMINATION
10 BY MR. ROBERTS:

11 Q Please state your name and address.

12 A My name is OKAMOTO, Suemasa. My present
13 address, No. 1123, 1-Chome, Kitazawa-machi, Setagaya-ku,
14 Tokyo.

15 Q May the witness be shown defense document
16 No. 1137. Please examine this document and tell us
17 whether or not it is your sworn affidavit.

18 A I acknowledge that this is my affidavit.

19 MR. ROBERTS: I offer defense document No. 1137
20 in evidence.

21 THE PRESIDENT: Mr. Comyns Carr.

22 MR. COMYNS CARR: Your Honor, we don't object
23 to the document as a whole, but there are certain parts
24 to which we object, to which I will call attention as

OKAMOTO

DIRECT

soon as--

1 THE PRESIDENT: Admitted on the usual terms.

2 CLERK OF THE COURT: Defense document No. 1137
3 will receive exhibit No. 2515

4 (Whereupon, the document above
5 referred to was marked defense exhibit
6 No. 2515 and received in evidence.)

7 MR. COMYNS CARR: Your Honor, would it be
8 convenient if I should go through it, indicating the
9 parts to which we object now, or take each of them
10 separately as my friend comes to them?

11 THE PRESIDENT: I think you had better indicate
12 them now, Mr. Carr.

13 MR. COMYNS CARR: If your Honor pleases.

14 Page 1, down to the end of paragraph 2 on
15 page 2, we object to all of it after the third line
16 on page 1, the reason being this: The rest of the
17 affidavit, the actual statement of facts, is confined
18 to what happened in Shanghai in 1937.

19 The long account of his subsequent career and
20 his claim to have been at a later date regarded as
21 pro-British and pro-American are, in our submission,
22 entirely irrelevant.

23 Then, in paragraph 5 on page 2, the second and
24 third lines, we object to the words "breaking the
25

OKAMOTO

DIRECT

1 Cease-Fire Agreement of May, 1933," on the ground that
2 the witness is there and in several subsequent passages
3 to which I should call attention, expressing his
4 opinion on the construction of the document.

5 One of the principal questions for the
6 Tribunal in this particular subdivision will be, what
7 is the true meaning of that document which my friend
8 referred to but which he did not read the parts rele-
9 vant to this question?

10 Then, your Honor, at the bottom of page 3,
11 the last four words, down to the end of paragraph 7
12 on page 4. We object to that because it purports,
13 contrary to the repeated rulings of the Tribunal, to
14 give the contents of a document not produced or accounted
15 for.

16 Then, your Honor, on pages 5 and 6, we object
17 to the whole of paragraph 9 because it is merely the
18 opinions and speculation of the witness as to the
19 future course of events.

20 Then in paragraph 12 -- also on page 6 --
21 we object to the reference in line 1 to instructions
22 from the home office, which must have been in writing
23 and are not produced; and also to the words in lines
24 4 and 5, "where it was prohibited to do so under the
25 Cease-Fire Agreement," for the same reason as before,

OKAMOTO

DIRECT

1 that we dispute that construction of the agreement,
2 which is a matter for the Tribunal.

3 Then on page 10, we object to paragraph 16
4 as being the opinion reported to the witness by an
5 unnamed foreigner.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE PRESIDENT: Mr. Roberts.

1 MR. ROBERTS: In regard to the objection to
2 page 1, may I state that this merely relates to the
3 history of the witness. This witness has very impor-
4 tant facts to relate, and I am sure the Court is inter-
5 ested in his background for the purpose of determining
6 the accuracy of his testimony.

7 Does your Honor wish me to go to the other
8 points?

9 THE PRESIDENT: Go on to the others, Mr.
10 Roberts. I don't think there is much difficulty about
11 that one. This is what the Japanese call curriculum
12 vitae. It is probably over-long, but nevertheless
13 it is not a substantial objection.

14 Of course, we won't allow any witness to
15 construe an agreement, which is a matter for us. And
16 the authority of an unnamed foreigner is no authority
17 at all.

18 MR. ROBERTS: As far as that matter is con-
19 cerned, that is a matter for cross-examination as to who
20 he got the information from. We must remember this
21 man was the consul-general in Shanghai at the time,
22 and received reports of events that were taking place
23 and spoke to many people from both sides.

24 We have the man here. If there is any question

OKAMOTO

DIRECT

concerning any statements, he can be cross-examined
1 concerning the statements he makes in his affidavit.
2 It is certainly quite different from a document where
3 no cross-examination is possible.

3 THE PRESIDENT: I think some of my colleagues
4 have the opinion that his personal history is really
5 irrelevant. That may be correct, but, personally, I
6 am inclined to be a little lenient in that regard.
7 That is a matter of discretion. It is a Japanese
8 weakness, I know.

9 I think the majority of the Bench are satisfied
10 with the indications I gave you. So omit those matters.

11 MR. ROBERTS: Well, is your Honor referring
12 to the--

13 THE PRESIDENT: We don't want what he thinks
14 about the agreement, what its meaning is, and we don't
15 want to know what the foreigner said unless he is iden-
16 tified. And where documents are relied upon, we want
17 them produced or their absence accounted for.

18 I will tell you what to omit if you are in any
19 doubt as you proceed to read. Perhaps you won't insist
20 on reading this long personal account unless you, in
21 your good judgment, think it will help us.

22 MR. ROBERTS: I believe, because of the impor-
23 tance of the matter, that it is important to know the
24

OKAMOTO

DIRECT

21,150

background of this man who is now testifying.

1 In so far as the information received from
2 a foreigner we may ask him later if he can identify
3 this person so that the information may be related.

4 I read exhibit 2515.

5 I was the Chief of the American Bureau in the
6 Foreign Office until April 1937 (12th year of Showa).
7 I was the Consul General in Shanghai from May 1937
8 (the 12th year) until March 20th 1938 (the 13th year),
9 and was a Councillor at the Japanese Embassy in London
10 from June 1938 (the 13th year of the Showa era) until
11 September 1940. I received an order to return home in
12 August 1940 (the 15th year of the Showa era) at the
13 time when Mr. MATSUOKA was the Foreign Minister. I
14 resigned when I returned home in October 1940, and was
15 appointed as the Japanese Consul General at Singapore
16 in October 1941 (the 16th year of the Showa era). I
17 arrived at Singapore on October 5th of the same year,
18 and was interned on the 8th day of the same month due
19 to the outbreak of the war. I was transferred to India,
20 then sent to Lorenzo Marcez (phonetic) due to the ex-
21 change of diplomats between Japan and England in
22 August 1942 (the 17th year of the Showa era). I was
23 ordered to go to Europe from the same place, and was
24 appointed as the Minister to Sweden in November 1942.
25

21,151

OKAMOTO

DIRECT

I took office there, and after the surrender of Japan,
1 departed there in January 1946 (of the 21st year of the
2 Showa era). I returned home in March and resigned
3 from the office in April.

4 "During my life as a diplomat I was in
5 England from the 9th year till the 11th year of the
6 Taisho era, again from the 13th year till the 15th
7 year of the Showa era, in America for six years from
8 the 14th year of the Taisho era till the 6th year of
9 the Showa era, and took office, in the home office,
10 as the Chief of a Section in the European and American
11 Bureau, and the Chief of the American Bureau. My rela-
12 tionship with England and America extended over a long
13 period of time, and I had so many friends among the
14 people of the both countries that, I think, I might be
15 regarded as one of the pro-British and pro-America
16 faction in the Foreign Office.

17 "Realizing the correctness of this principle,
18 I believed that Japan, England and America should not
19 conflict in any manner, at any time, and that, further,
20 they were not able to wage a decisive conflict, con-
21 sidering many conditions surrounding them, the only
22 way for them to get along was to bring about friendly
23 understanding between them."

24 THE PRESIDENT: That is a matter of opinion.
25

OKAMOTO

DIRECT

1 "In Shanghai too I made a friendly acquaintance with Mr. Yu Hung-chun, the then Mayor of Shanghai;
2 Mr. Gauss, the U.S.A. Consul General; Mr. J.W.O. Davidson,
3 the British Acting Consul General; and Mr. John Keswick,
4 an influential business man in Shanghai.
5

6 "At the time when I arrived at my post at
7 Shanghai, while there was the feeling of relief among
8 the Chinese people on the news that the Sian Incident
9 was settled and Generalissimo Chiang Kai-shek rescued,
10 there was a gloomy and uneasy foreboding about Sino-
11 Japanese relations even in Shanghai over stormy indica-
12 tions caused by the North China situation.
13

14 "When I investigated the affairs concerning
15 Japan and China on my arriving at my post at Shanghai,
16 I got the report that China..."

17 This is evidently a report, not his own testi-
18 mony.

19 THE PRESIDENT: "Was reinforcing--"

20 MR. ROBERTS: "Was reinforcing many Paoantui
21 (or Peace Preservation Corps) in the forbidden area,
22 mixing it with the regular army, and was constructing
23 trenches and wire-entanglements around the place,
24 and was reported to be reconstructing the Wusung For-
25 tress. When I received these reports, I did not want
 to neglect them, though it was not long since my

OKAMOTO

DIRECT

1 assuming office, and recognizing the necessity of calling
2 them to attention of the authorities concerned, I
3 requested on the 23rd of June the calling of a meeting
4 of the joint committee based on the Cease Fire Agreement
5 of May 5, 1933. The navy, after consultation, approved
6 my idea."

7 THE PRESIDENT: He should state who reported
8 it.

9 Continue the reading of the affidavit.

10 Mr. COMYNS CARR: Your Honor, I ought also
11 to have objected to the words which my friend has read,
12 and to which I did not object, "in the forbidden area,"
13 in the fifth line from the bottom. It is also in dis-
14 pute whether there was any such forbidden area under
15 this agreement.

16 THE PRESIDENT: What was forbidden depends
17 upon the meaning of the Cease Fire Agreement, which we
18 will construe.

19 MR. ROBERTS: That is correct.

20 THE PRESIDENT: We will recess for fifteen
21 minutes.

22 (Whereupon, at 1445, a recess was
23 taken until 1500, after which the proceedings
24 were resumed as follows:)

25

21,154

OKAMOTO

DIRECT

S
p
r
a
t
t
&
Y
e
l
l
d
e
n

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Roberts.

4 MR. ROBERTS: (Reading)

5 "This Committee was organized with the
6 Consul-Generals and military and naval attaches of
7 Japan, Britain, U.S.A., France and Italy, and was to
8 meet from time to time. But it had not met for five
9 years.

10 "The Joint-Committee met at the French consula-
11 general, and was chiefly concerned with the discussion
12 between Mayor Yu and myself.

13 "I proposed in substance as follows: 'I have
14 received information about the reinforcement of the
15 Paoantui, the construction of trenches, and the use of
16 light tanks and iron entanglements by the Chinese army
17 at the forbidden area. If this were true, it would
18 constitute a breach of the Cease Fire Agreement. And
19 I wish the Committee would take measures to investigate
20 whether the above facts are true or not.' Mayor Yu
21 made an objection to the proposal for investigation,
22 insisting that Japan was too nervous. And the third
23 party members present at the Committee seemed not too
24 pleased to intervene in the strife between Japan and
25 China. The meeting did not reach any specified

21,155

OKAMOTO

DIRECT

1 conclusion. But I believed that I should call the
2 attention of the Powers to the source of uneasiness
3 at Shanghai and that I drove a nail into the Chinese
4 policy.

5 "(6) On July 7, 1937 the Marco Polo Bridge
6 Incident broke out. It brought serious anxiety to the
7 Chinese and Foreigners at Shanghai.

8 "At that time, the HAYASHI Cabinet had already
9 fallen and Prince KONOYE formed a Cabinet. The Foreign
10 Minister was Mr. HIROTA. A few days after the outbreak
11 of the Incident, I received instructions by telegraph
12 from the Government."

13 MR. COMYNS CARR: I understood this was one
14 of the passages which the Tribunal ruled should be
15 omitted.

16 THE PRESIDENT: To prove the contents of a
17 document if that be necessary you must produce the
18 document or account for its absence.

19 BY MR. ROBERTS:

20 Q Mr. OKAMOTO, referring to the telegraph that
21 you mention in your affidavit, is that telegraph,
22 telegram, now in your possession?

23 A It is not in my possession.

24 THE PRESIDENT: That is not enough.

25 Q Where was that telegram dispatched from?

OKAMOTO

DIRECT

1 A That was a telegram addressed to me by
2 Foreign Minister HIROTA at that time in Tokyo.

3 THE PRESIDENT: What did you do with it?

4 THE WITNESS: I received that telegram as
5 Consul General in Shanghai and it is supposed to be
6 in the files of the Consulate General in that city.

7 THE PRESIDENT: You must produce it to prove
8 its contents.

9 BY MR. ROBERTS:

10 Q Do you know whether or not that telegram,
11 the original thereof, is still in existence?

12 A I think it is in the files of the Foreign
13 Office.

14 THE PRESIDENT: It must be produced. This
15 will not be accepted as evidence of its contents.

16 Q Are you able to recall the contents of that
17 telegram, Mr. OKAMOTO?

18 THE PRESIDENT: That has nothing to do with
19 it. That is irrelevant. The objection is upheld.

20 Q You further state in your affidavit you
21 received instructions bearing the same import on two
22 or three successive occasions--

23 THE PRESIDENT: They too must be produced or
24 their absence accounted for.

25 MR. ROBERTS: I would like to ask the witness

OKAMOTO

DIRECT

21,157

1 the manner in which he received these instructions,
2 whether they were in writing or ~~not~~,
3

4 THE PRESIDENT: It says they reached his
5 hands, not his ears. They must have been in writing.
6

7 Q Will you tell us, Mr. OKAMOTO, the type of
8 instructions that you refer to on the successive
9 occasions?
10

11 A They were all telegraphic instructions.
12

13 Q Do you know whether or not the later in-
14 structions are still in existence?
15

16 A I believe that the original of this telegram
17 is in the files of the Foreign Office -- the original
18 of these telegrams.
19

20 Q Have you had occasion to search the files or
21 have the files searched for these particular telegrams?
22

23 A I have never tried to make a search of the
24 telegrams myself.
25

THE PRESIDENT: He said he believes they are
in the Foreign Office. Apparently he has either made
a search and found them there or that is an assumption.

Q I would like to inquire further on that
point. Mr. OKAMOTO, are you keeping in mind that the
Foreign Office was burned during the war?

THE PRESIDENT: What was that question? I
did not hear it.

OKAMOTO

DIRECT

1 the manner in which he received these instructions,
2 whether they were in writing or ~~not~~;

3 THE PRESIDENT: It says they reached his
4 hands, not his ears. They must have been in writing.

5 Q Will you tell us, Mr. OKAMOTO, the type of
6 instructions that you refer to on the successive
7 occasions?

8 A They were all telegraphic instructions.

9 Q Do you know whether or not the later in-
10 structions are still in existence?

11 A I believe that the original of this telegram
12 is in the files of the Foreign Office -- the original
13 of these telegrams.

14 Q Have you had occasion to search the files or
15 have the files searched for these particular telegrams?

16 A I have never tried to make a search of the
17 telegrams myself.

18 THE PRESIDENT: He said he believes they are
19 in the Foreign Office. Apparently he has either made
20 a search and found them there or that is an assumption.

21 Q I would like to inquire further on that
22 point. Mr. OKAMOTO, are you keeping in mind that the
23 Foreign Office was burned during the war?

24 THE PRESIDENT: What was that question? I
25 did not hear it.

21,158

OKAMOTO

DIRECT

1 (Whereupon, the last question was
2 read by the official court reporter.)

3 THE PRESIDENT: We have numerous documents
4 from the Foreign Office.

5 MR. ROBERTS: There are also many, if your
6 Honor please, that were destroyed in the fire.

7 THE PRESIDENT: This witness has said enough
8 to make it quite clear that he is not going to
9 depose the telegrams are not available.

10 MR. ROBERTS: In that case a search will be
11 made and they will be produced hereafter if available.

12 Is the rest of that paragraph within the
13 objection, if your Honor please?

14 THE PRESIDENT: Mr. Comyns Carr.

22 THE PRESIDENT: He could tell us what he
23 told others, not to prove what the instructions were
24 if it were relevant, but it is not relevant.

25 The objection is upheld.

MR. ROBERTS: If your Honor please, we want

OKAMOTO

DIRECT

1 to be heard on that particular paragraph which I
2 believe is a meeting of the commission and the various
3 consuls and to tell what took place is certainly
4 relevant and of extreme importance.

5 THE PRESIDENT: How could it be relevant?

6 MR. ROBERTS: It states exactly what took
7 place and in stating what he told the consuls and
8 what they said to him.

9 THE PRESIDENT: Without proof of what the
10 instructions were the whole paragraph is pointless,
11 and if you had proof of the instructions, the fact
12 that he passed them on to somebody else would be
13 irrelevant.

14 MR. ROBERTS: We believe it important to show
15 that the instructions which he received from HIROTA
16 he passed on to the consuls.

17 THE PRESIDENT: However, we do not reach that
18 because the instructions have not been proved as they
19 should be proved by production of the document.

20 MR. ROBERTS: He is not attempting to--

21 THE PRESIDENT: The objection is upheld.
22 Proceed to read paragraph 8.

23 MR. ROBERTS: We just wanted to remind the
24 Court this man is attempting to prevent an incident
25 and is trying to tell exactly what he did--

21,160

OKAMOTO

DIRECT

1 THE PRESIDENT: Please do not argue with me.
2 We know exactly what you are trying to get at but
3 you are not able to do it properly. The Court's
4 ruling has been given and you must observe it.

5 MR. ROBERTS (Reading):

6 "(8) On around July 15, I remember Mr.
7 Yu Hung-chun, the Mayor of Shanghai, invited me to
8 a tea party, requesting the military and naval
9 attaches to accompany me. So I presented myself at
10 the party with Major General KITA, Seiichi (Army),
11 Rear Admiral HONDO, Tadao (Navy) and some of the
12 staff of the Consulate General. The party was held
13 at the Mayor's official residence and there was a
14 small group of Chinese, an influential man from
15 Shanghai, the Chief of Police, the Chief of the
16 Paoantui and the Secretary of the Mayor,-- Tu Yueh-
17 sheng, Yu Chia-ching, Wang Hsiao-hai, etc.
18

19 The Mayor spoke in greeting as follows:

20 "'The citizens of Shanghai do not want to
21 have another model of the incident which happened
22 five years ago. We wish, whatever may happen in
23 another district, to avoid a warfare between Japan
24 and China at Shanghai. I will do everything possible
25 and I hope the Japanese will cooperate with us in this
 aim.'

21,161

OKAMOTO

DIRECT

1 "In reply, I said:

2 "Japan, too, does not intend that the
3 incident shall spread to Shanghai. Especially, since
4 I have been receiving from our Government the in-
5 structions which request us to take all possible means
6 to prevent a clash between Japan and China at
7 Shanghai, the policy of our Government being local
8 solution and nonenlargement concerning the Marco
9 Polo Bridge Incident. I am very pleased to hear
10 the present proposal from China. Japan will naturally
11 cooperate with China to prevent any clash between
12 them at Shanghai. But we are afraid that China might
13 invoke a crisis at Shanghai by terrorism and by the
14 anti-Japan movement as was experienced by Japan five
15 years ago, and we hope the Chinese authorities will
16 be careful about controlling these matters."

17

18

19

20

21

22

23

24

25

21,162

OKAMOTO

DIRECT

THE PRESIDENT: Although he can tell us what he said to the Mayor of Shanghai, he cannot prove the contents of the document that way. That is no proof of the contents of the document..

5 MR. ROBERTS: May I remind the Court
6 what it said at the time the defense interposed
7 serious objections to opinions and statements of
8 witnesses of the prosecution. The Court stated
9 at that time it was not a jury, it was a Tribunal
10 consisting of eleven judges and could properly pick
11 out the statements which were facts and disregard
12 those which were opinions.

13 THE PRESIDENT: This is the first attempt
14 made in this court to settle questions of evidence
15 by pointing out that we are not a jury. Frankly,
16 I cannot understand what you are driving at, nor
17 can any other Member of the Court.

18 MR. ROBERTS: I am merely repeating what
19 the Court has said on previous occasions upon ob-
20 jection by defense when witnesses were attempting
21 to make statements which the defense thought were
22 statements of opinion.

23 THE PRESIDENT: I have frequently said
24 when inadmissible evidence was read to us that we,
25 being judges, would know it was inadmissible and

OKAMOTO

DIRECT

21,163

1 we would discard it, and I have just told you that
2 now. I have allowed you to read that **stuff** I
3 have referred to, but I have also pointed out that
4 we are not going to be influenced by it because it
5 is not proper proof.

6 I do not see why we should have all this
7 inflicted upon us. We have very little time to
8 spare. I advise you to have a consultation with
9 your colleagues.

10 MR. ROBERTS: I merely reminded the Court
11 that it is not bound by technical rules of evidence.

12 THE PRESIDENT: We are bound by that rule
13 that the evidence must have probative value, and
14 this is the way to insure that it has probative
15 value: that if you refer to a document that you
16 produce it or account for its absence. How pre-
17 postorous it would be if there were lying in the
18 foreign office important documents and we were
19 satisfied to leave them there and allow witnesses
20 to tell us what was in them without producing them.
21 This evidence in these telegrams is of vital im-
22 portance, as you should know.

23 MR. ROBERTS: As I have said, an imme-
24 diate search will be made to ascertain whether or
25 not these telegrams are still in existence.

21,164

OKAMOTO

DIRECT

THE PRESIDENT: Well, why remind us that we are not a jury and that we should throw discretion to the wind in these matters and receive any old evidence at all tendered when the evidence itself, the proper evidence, is probably in Tokyo within a mile of us?

MR. ROBERTS: May I proceed to read, your Honor?

THE PRESIDENT: You may.

MR. ROBERTS (Reading):

"We exchanged opinions in this manner, and since then, we were very close with each other. The Mayor would phone me two or three times a day, requesting us to restrain some acts on the part of our marines, etc.

"9) While the situation in North China was aggravated contrary to our expectations, and as the phase developed" --

THE PRESIDENT: Mr. Colyns Carr.

MR. COMYNS CARR: Your Honor, paragraph 9 was one of those I objected to. I am not quite sure whether the Tribunal ruled upon it. It is, in our submission, merely opinions and speculations of this witness.

THE PRESIDENT: We have repeatedly said

OKAMOTO

DIRECT

1 that this type of opinion evidence will be dis-
2 regarded.

3 MR. ROBERTS: If your Honor please, if
4 you will refer to the second paragraph, second line,
5 he said, "I got the report," and next to the last
6 line he also said, "based upon a report." So it
7 cannot be his opinion if it is something based on
8 a report which he received.

9 THE PRESIDENT: He got a report that the
10 attitude of China seemed to gradually alter, did he?

11 MR. ROBERTS: I refer to the next paragraph,
12 if your Honor please, second line.

13 THE PRESIDENT: Proceed to read.

14

15

16

17

18

19

20

21

22

23

24

25

21,166

OKAMOTO

DIRECT

Gre
e
n
b
e
r
g
&
M
o
r
s
e
1 MR. ROBERTS: "At first, I thought that China
2 was earnestly wishing to prevent the warfare spreading
3 to Shanghai. But by this time I got the report that
4 it was the prevailing idea of young Chinese officers
5 that if Japan would defy a military action which might
6 develop in North China, China could give pain to
7 Japan in Shanghai and China would be able to fight well
8 in this area because the defense works were comparative-
9 ly good there. There was the report, too, that the
10 Paoantui had been reinforced in the prohibited area,
11 that the regular gathered round Shanghai amounted to
12 several divisions. All these matters indicated to us
13 that something was being actively plotted by China.

14 "At the beginning of August, circumstances
15 made us feel that something imminent would happen,
16 and the Japanese residents evacuated from the Yantze
17 Valley on board the gunboats and destroyers which were
18 dispatched by the Japanese Navy along the Yantze River.
19 These people gathered at Shanghai.

20 "Under these imminent circumstances, when I
21 was exerting all of my best efforts with a view to
22 avoiding a clash between Japan and China, there finally
23 happened the incident of August 9, in which Sub-
24 lieutenant OYAMA was killed by Chinese soldiers near
25 Honchiao Airdrome, whereupon the situation suddenly

21,104

OKAMOTO

DIRECT

1 assumed a serious turn.

2 "On August 11, I, foreseeing a crisis and partly
3 under instructions from the home office, visited
4 Mayor Yu at the City Government. I showed him the
5 information about the reinforcement of the Paoantui,
6 the construction of trenches and wire-entanglements
7 at Wusung or in other places, and said, 'If you neglect
8 these conditions, it may be very dangerous, and a clash
9 between Japan and China may not be avoidable. If you
10 truly desire to avoid such a clash, I hope you will
11 make an effort to withdraw the Paoantui to a reasonable
12 distance necessary to accomplish that end.' The Mayor
13 did not easily accept my proposal stating that Japan
14 was responsible for the aggravation of the incident
15 by reinforcing the marines by war-ships. But after
16 the four hour's talk at the City Government I received
17 a promise that he would take every possible means to
18 prevent a clash between Japan and China. I left the
19 City Government a little past seven, and it was dark.
20 My automobile was stopped on the way by Chinese soldiers
21 with bayonets. They did not allow me to pass, at
22 first even though I told them that I was the Japanese
23 Consul-General. But I passed finally by ordering my
24 chauffeur to tell them clearly to pass us as it was
25 the Japanese Consul-General.

21,168

OKAMOTO

DIRECT

1 "On the next morning (12th of the month) the
2 87th and 88th divisions of the Chinese Army advanced
3 to the Pehchan Station at Shanghai. Immediately, I
4 made a phone call to the City Government, but the
5 Mayor was absent. Then, finding him at his official
6 residence at the French Concession, I requested a
7 member of the staff of the Consulate-General to phone
8 him. That official reported to me that the Mayor said
9 that he could do nothing, when the situation got bad
10 like this. And in reply to the former's question as
11 to why the Mayor was not in the City Government office,
12 the Mayor said he would not go to the City Government
13 office because he was stopped several times late last
14 evening on his way home by the Paoantui, and they did
15 not allow him to pass, though he informed them many
16 times that he was the Mayor. This I heard from the
17 official.

18 "Then I considered that this was the time to
19 exert my final effort, and I requested a meeting of the
20 joint committee.

21 "The meeting was opened at the Shanghai
22 Municipal Council in the afternoon of the same day.

23 "The attendance there was Mayor Yu, American
24 and French Consul-Generals, British and French Consul-
25 Generals, British and Italian Acting Consul Generals,

21,169

OKAMOTO

DIRECT

1 myself and Senior Staff Officer of the Marines TAKEDA
2 from Japan.

3 "At the beginning of the meeting, I told
4 them the imminence of the situation, and I said as
5 follows: 'Yesterday afternoon, I asked the Mayor to
6 force the Paoantui to withdraw to a removable distance
7 to avoid a clash between Japan and China, and the
8 Mayor promised to exert every effort. Nevertheless,
9 the Chinese Regular Army advanced to the Pehchan
10 Station this morning and besieged the Japanese residents
11 in Honkou Area. Now the circumstances do not permit
12 any delay in adopting measures to stop a conflict.'
13 Then I requested the Joint Committee to investigate
14 China's breach of the Cease Fire Agreement, and to take
15 adequate measures to avoid a clash.

16 "Against this, Mayor Yu said that Japan could
17 not avail herself of the Joint Committee based upon
18 the Cease Fire Agreement, because Japan had broken
19 and voided this Agreement last year by the fact that
20 the Japanese marines advanced to Patsuchiao. (With
21 regard to this point, the commissioner of a third
22 power assailed him and inquired whether China had
23 filed a protest with the Joint Committee against Japan's
24 breach of the Agreement). He also said that the present
25 measures were taken by China as a means of self-defense

OKAMOTO

DIRECT

1 the concentration of Japanese forces, and declined to
2 cooperate with Japan in order to avoid a clash.

3 "Then I asked further, 'What kind of measures
4 for this remedy does each power have?'

5 "The representative of Britain said: 'After
6 all it may need the power of the Marines of Shanghai,
7 but, as for Britain, we cannot do anything without
8 instructions from our home land.'

9 "The representative of United States of
10 America stated: 'It is impossible to use the American
11 Marines without the order of the Chief of the General
12 Staff.'

13 "Italy's representative stated: 'We can place
14 the Italian army between the Japanese and Chinese army
15 to avoid a clash, but this very army is now on the way
16 from the home land to Shanghai.'

17 "Being that no good ideas were produced at
18 the meeting other than the above, the meeting was
19 closed after we decided that Japan and China should
20 have never resorted to force, not to the extent that
21 they would be actually attacked by the other party.

22 "Under these circumstances, Staff Officer
23 TAKEDA was very anxious saying that we were not then
24 prepared for defense, and if we delayed in taking up
25 some necessary measures, we would be driven into an

21,171

OKAMOTO

DIRECT

1 irrevocable position. In reply to him, I said that
2 in these grave circumstances, we had to claim all that
3 was possible for us, and to exert every effort we could,
4 lest we do not cause any trouble for Japan. And I
5 stopped his taking any action.

6 "I believe I took every possible measure for
7 the settlement of the incident, and exerted with the
8 last moment, every effort possible.

9 "Incidentally, the meeting was closed at
10 6 p.m.

11 "On August 13, the Chinese plain clothes
12 soldiers began to fire from the building of the China
13 Press and in the afternoon an exchange of shots took
14 place at the Patsuchiao.

15 "In the evening of the same day, the American
16 and British Consul-Generals made a proposal that if
17 it was the desire of Japan to avoid a clash, they would
18 use their good offices for it. The condition of the
19 use of their good offices was to reduce the then situ-
20 ation to the state as it existed at the date of the
21 happening of the Captain OYAMA Affair in order to avoid
22 a clash between Japan and China. We accepted this,
23 and notified Mayor Yu. Then Mayor Yu managed to report
24 to Nanking. But the proposal to use their good offices
25 was too late, as the affair entered an irrevocable

OKAMOTO

DIRECT

1 phase by the Chinese raiding of Japan's squadron and
2 on the Japanese residence area in Shanghai."

3 With respect to this paragraph 16, I would
4 like to ask the witness if he can identify the person
5 that made the remark that follows:

6 BY MR. ROBERTS:

7 Q Mr. OKAMOTO, in paragraph 16 of your affidavit
8 you state that at the beginning of the outbreak of
9 the incident you were given certain information by a
10 foreigner. Can you identify the person referred to
11 in this paragraph?

12 THE PRESIDENT: After all, it is only an
13 opinion and we wouldn't take his opinion. Why take
14 his informant's? Ask him.

15 Q (Continuing) Will you tell us, please?

16 A I believe it was Mr. Woodhead, editor of
17 the Oriental Affairs Magazine which was published in
18 Shanghai, who told me about this. However, I said
19 in my affidavit "a foreigner" because I couldn't say
20 very positively whether it was Mr. Woodhead or not
21 because of the fact that at that time I was so busily
22 preoccupied in the business affairs of the consulate
23 general in Shanghai, attending conferences of the
24 consulate general staff, conferences and interviews
25 with other consul-generals from other nations, meeting

OKAMOTO

DIRECT

1 with the press, that my recollection isn't positive
2 enough to make a very definite statement that it was
3 Mr. Woodhead.

4 THE PRESIDENT: Well, the evidence is val-
5 less even if it weren't an opinion. The opinion I
6 refer to is in the statement, "We know that Japan has
7 made every effort to prevent an incident," and in
8 the expression "tough elements" which involved another
9 opinion.

10 Well, proceed to read paragraph 17.

11 MR. ROBERTS: I shall proceed to read para-
12 graph 17:

13 "Moreover, the marine strength at the time
14 was 2,000, and to this was added 300 men evacuated from
15 Hankow, plus about 1000 reinforcements from Japan
16 making the total of 3300 against the Chinese forces
17 around the Shanghai area which was estimated between
18 50,000 to 100,000. The odds were so great it is
19 entirely unthinkable the Japanese would try to wage
20 war. I frequently explained these facts to the consular
21 corps and other interested parties and my explanation
22 was accepted. In fact the Japanese side was placed
23 in a very difficult position soon after the outbreak
24 of hostilities. In particular, on August 17, because
25 of the scarcity of Japanese forces in the Yang Tsze

OKAMOTO

DIRECT

1 Poo area, the Japanese position was almost destroyed.
2 As a result we reached the conclusion that we must be
3 prepared for the worst.

4 "My efforts in requesting the joint commis-
5 sion on June 23rd, and August 12th, 1937, to investi-
6 gate and attempt to settle the violation by the Chinese
7 of the Truce agreement of May 1932, may be read in
8 the minutes of the said commission."

9 You may cross-examine.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

OKAMOTO

DIRECT

THE PRESIDENT: Judge Nyi.

MR. ROBERTS: I'm sorry. May I first ask the witness to identify the minutes that he has referred to because we intend to use them hereafter?

THE PRESIDENT: You may, Mr. Roberts.

MR. ROBERTS: May the witness be shown defense document No. 1064 and 1063?

MARSHAL OF THE COURT: The first document, Mr. Roberts, is defense document 1063 I am handing the witness.

(Whereupon, a document was handed

to the witness.)

BY MR. ROBERTS (Continued):

Q Will you examine defense document No. 1063 and tell us if they are the minutes of the meeting of the Joint Commission held on August 12 and referred to in your affidavit?

A Yes. This is the minutes of the Joint Commission which conferred at the Shanghai Municipal Council on the afternoon of August 12, 1937. These minutes were taken down by the clerk of the Joint Commission and, after they were prepared, received the approval of the various representatives on the Commission. The original should be in the custody of a Mr. Long, who was the clerk in the Shanghai

21,176

OKAMOTO

DIRECT

Municipal Council, an American, who is also attached to the Consular Courts.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: Your Honor, we are not objecting to these. Therefore, there is no need to go into detail as to that.

THE PRESIDENT: Are you going to tender them, Mr. Roberts?

MR. ROBERTS: I offer in evidence defense document No. 1063 at this time.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1063
will be given exhibit No. 2516.

(Whereupon, the document above re-

ferred to was marked defense exhibit No.

2516 and received in evidence.)

MR. ROBERTS: I would now like to have the witness examine defense document 1064 and tell us whether or not that is a correct copy of the minutes of the meeting held on June 23.

(Whereupon, a document was handed to the witness.)

THE WITNESS: Yes.

MR. ROBERTS: I offer in evidence defense document No. 1064.

OKAMOTO

DIRECT

1 THE PRESIDENT: Admitted on the usual terms.

2 Why tender 1063 first, because it is a later date,
3 is it? Won't you read the second one first; if you
4 are going to read them? The minutes of August, 1937
5 have been tendered before the minutes of June, 1937.
6 If you are going to read these documents, I suggest
7 you read the June document first. There may be a
8 good reason for not doing so.

9 MR. ROBERTS: There is no reason for doing
10 so, and I intend to read the June document first.

11 CLERK OF THE COURT: Defense document 1064
12 will be given exhibit No. 2517.

13 (Whereupon, the document above re-
14 ferred to was marked defense exhibit No.
15 2517 and received in evidence.)

16 MR. ROBERTS: For the sake of saving time,
17 I have marked certain excerpts in these exhibits.
18 I will read the excerpts as marked. The names of
19 those present I will not read but will simply refer
20 the Court to the names as showing the members of
21 various nations present at the meeting.

22 THE PRESIDENT: French, Chinese, Japanese,
23 British and Italian.

24 MR. ROBERTS: That is correct.

25 I begin on page 1:

21,178

OKAMOTO

DIRECT

1 "The Chairman said he would like first of
2 all to thank the members of the Joint Commission for
3 electing him as its Chairman. He asked the meeting
4 to excuse him if owing to language difficulties he
5 did not at times make himself clear.

6 "He referred to the Circular (No. 232) con-
7 vening the meeting, which had been called at the re-
8 quest of the Japanese Civil Delegate and invited Mr.
9 OKAMOTO to proceed.

10 "Responding, Mr. OKAMOTO said, 'Mr. Chairman
11 and honorable members, I understand that it is quite
12 some time since the Joint Commission last met to-
13 gether, and I am very glad to have the present oppor-
14 tunity of meeting my colleagues. I am particularly
15 grateful to the Chairman for having kindly acceded to
16 my request to convene the present meeting.'

17 "Continuing, Mr. OKAMOTO remarked that the
18 subject which he wished to discuss was one in which
19 he was sure the Joint Commission was vitally inter-
20 ested. He had recently received information to the
21 effect that fortifications are being erected or were
22 about to be built in the Woosung area. This matter
23 being of no small concern, was one which the Joint
24 Commission could not connive at. The Commission was
25 aware that by virtue of Article II of the May 5th,

OKAMOTO

DIRECT

21,179

1 1932 Agreement, Chinese troops were not allowed to
2 pass through certain specified areas, including the
3 Woosung area 'pending later arrangements.' While it
4 may be argued that this article only provides that
5 movements of Chinese troops were to be restricted,
6 any attempt of the Chinese authorities to fortify
7 any part of the demilitarized area constituted in his
8 submission a hostile act and as such ran counter to
9 the spirit of the 1932 Agreement. Furthermore, he
10 was constrained to believe that the members (neutral?)
11 of the Joint Commission would agree that, if the for-
12 tifications had actually been built, they would be
13 regarded as serious menace to the integrity and
14 safety of the International Settlement and French
15 Concession. The May 5th, 1932 Agreement had thus far
16 proved an admirable instrument towards the maintenance
17 of peace in and around Shanghai and the building of
18 fortifications in the area mentioned would in his
19 submission render that instrument null and void. He
20 sincerely hoped that the report of fortifications,
21 actual or contemplated, at Woosung was untrue, but
22 he was anxious to have his Chinese colleagues dispel
23 Japanese suspicion in this regard. In order to dis-
24 prove or verify this report, he would like to re-
25 quest that the Chinese delegation be good enough to

21,180

OKAMOTO

DIRECT

1 allow an inspection at an early opportunity of the
2 Woosung area by the Japanese delegates. Should the
3 report prove to be correct he hoped that immediate
4 steps would be taken to end these warlike prepara-
5 tions. In conducting the proposed inspection he sug-
6 gested that the neutral members of the Commission
7 accompany the Japanese Delegation, should the Chinese
8 delegation so desire."

9 I skip to page 3, second paragraph.

10 THE PRESIDENT: That is a very lengthy
11 excerpt you are about to read, Mr. Roberts.

12 MR. ROBERTS: Yes, it is.

13 THE PRESIDENT: You would not get far with
14 it tonight. We will adjourn until half-past nine
15 tomorrow morning.

16 (Whereupon, at 1600, an adjourn-
17 ment was taken until Thursday, 1 May
18 1947, at 0930.)

19 - - -
20
21
22
23
24
25